
Public Notice

Applicant:
Cimato Enterprises, Inc.

Date:
Published:
Expires:

**U.S. Army Corps
of Engineers**

In Reply Refer To:

Buffalo District CELRB-CO-R RE: 1999-02645(0) Section: NY 404

**Application for Permit under Authority of
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

Cimato Enterprises, Inc., 9220 Transit Road, East Amherst, New York 14051, proposes to construct the Fox Trace East retail shopping area on an approximately 6.9 acre parcel located on Sheridan Drive, west of Meadowbrook Road, in the Town of Clarence, Erie County, New York.

The project consists of the following:

a. Approximately 700 lineal feet of the headwaters of Got Creek will be relocated to the edge of the property. This relocation will include approximately 170 lineal feet of corrugated metal pipe and approximately 535 lineal feet of open channel.

b. Approximately 0.49 acre of Federal jurisdiction wetlands adjacent to the reach of Got Creek to be relocated will be filled to create additional developable space on the site.

c. As mitigation for the proposed impacts to Got Creek, the applicant proposes to establish a small meander bend in the relocated stream channel similar to the bend in the existing creek. In addition, a buffer zone will be established adjacent to the relocated creek to reduce potential water quality impacts. The new channel will be excavated to existing shale bedrock to mirror the substrate of the existing channel. The existing channel has no riffle or pool complexes or other special aquatic site features. The channel is intermittent and surrounded by open field, and provides primarily flood flow and storage functions on the site. The area adjacent to the creek has been heavily disturbed and offers little in the way of wildlife habitat.

d. As mitigation for the permanent loss of approximately 0.49 acre of Federal jurisdiction wetland on the project site, the applicant proposes to restore approximately 1.5 acre of wetland at an off site location within the same watershed unit (Tonawanda Creek). The proposed mitigation will be primarily emergent marsh within a forested surrounding. The proposed mitigation area should provide enhanced habitat diversity within the mitigation area and higher quality habitat than the impact site.

The applicant's stated purpose is to develop the parcel for commercial use. Information submitted by the applicant indicates that avoidance of stream impacts, due to the site configuration, would render the site unusable.

Location and details of the above described work are shown on the attached maps and drawings.

Questions pertaining to the work described in this notice should be directed to Steven V. Metivier, who can be contacted by calling (716) 879-4314, or by e-mail at: steven.v.metivier@usace.army.mil

The following authorization(s) may be required for this project:

Water Quality Certification (or waiver thereof) from the New York State Department of Environmental Conservation.

There are no registered historic properties or properties listed as being eligible for inclusion in the National Register of Historic Places that will be affected by this project.

In addition, available evidence indicates that the proposed work will not affect a species proposed or designated by the U.S. Department of the Interior as threatened or endangered, nor will it affect the critical habitat of any such species.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-330. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

Comments should be sent to the U. S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199, and should be marked to the attention of Steven V. Metivier, or by e-mail at: steven.v.metivier@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values,

land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy

needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Paul G. Leuchner
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.